

No. 12,923

IN THE

United States Court of Appeals  
For the Ninth Circuit

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JEWELL JAMES WILLIAMS,

*Appellant,*

vs.

E. B. SWOPE, Warden, United States  
Penitentiary, Alcatraz, California,

*Appellee.*

BRIEF FOR APPELLEE.

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**BRIEF FOR APPELLEE.**

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**JURISDICTIONAL STATEMENT.**

This is an appeal from an order of the United States District Court for the Northern District of California, hereinafter called "the Court below", denying appellant's petition for a writ of habeas corpus. (Tr. 19, 27.) The Court below had jurisdiction of the habeas corpus proceedings under Title 28 U.S.C.A., Sections 2241, 2243 and 2255. Jurisdiction to review the order of the Court below denying the petition is conferred upon this Honorable Court by Title 28, U.S.C.A., Section 2253.

### STATEMENT OF THE CASE.

The appellant, an inmate of the United States Penitentiary at Alcatraz, California, filed a petition for writ of habeas corpus (Tr. 3-4), the Court below issued an order to show cause (Tr. 5), the appellee, the Warden of the said penitentiary, filed a return to order to show cause (Tr. 6-11), which the appellant traversed (Tr. 11-12), and the Court below thereupon ordered a writ of habeas corpus to issue (Tr. 12-13), which was duly issued. (Tr. 14.) Thereafter the appellee filed a return to writ of habeas corpus (Tr. 17-19), which the appellant traversed (Tr. 15-16), and the appellant was produced before the Court pursuant to the said writ. Thereafter the matter was submitted, and the Court below entered the following "Order Dismissing Petition for Writ of Habeas Corpus":

"Upon the entry of appropriate Findings of Fact and Conclusions of Law,

It Is Hereby Ordered that the Petition for Writ of Habeas Corpus be, and the same is, dismissed, and the Writ of Habeas Corpus is discharged.

The respondent may have ten days within which to submit his proposed Findings of Fact and Conclusions of Law.

Dated February 13, 1951.

/s/ Michael J. Roche,  
Chief United States  
District Judge" (Tr. 19.)

Thereupon the Court below entered the following "Findings of Fact and Conclusions of Law":

## “FINDINGS OF FACT

### I.

That petitioner is a citizen of the United States;

### II.

That the person hereinafter called ‘the petitioner,’ on whose behalf the petition for writ of habeas corpus was filed, is detained by respondent, E. B. Swope, as Warden of the United States Penitentiary at Alcatraz, California, under and by virtue of the judgments and sentences and warrants of commitment duly and regularly issued in criminal cause numbered 21,932 by the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, on June 6, 1945; in criminal cause numbered 7601 by the District Court of the United States for the District of Connecticut, on October 22, 1945; in criminal cause numbered 5208 by the District Court of the United States for the Western District of Missouri, Southern Division, hereinafter called the ‘Missouri Court,’ on October 9, 1946; and in criminal cause numbered 4631 by the District Court of the United States for the Western District of Arkansas, Fort Smith Division, hereinafter called the ‘Arkansas Court,’ on February 3, 1947, and transfer order dated the 13th day of August, 1948, and signed by Frank Loveland, Assistant Director of the Bureau of Prisons of the Department of Justice, of the United States of America;

### III.

That with good-time credits earned petitioner has fully served the sentences imposed upon him

by the District Court of the United States for the Eastern District of Louisiana and by the District Court of the United States for the District of Connecticut; that petitioner has not fully served either the sentence imposed upon him by the Missouri Court or the sentence imposed upon him by the Arkansas Court;

#### IV.

That petitioner attacks the Missouri judgment and sentence on the ground that he was denied the effective assistance of counsel by being refused a continuance necessary in the preparation of his case, request having been made by his counsel on the morning of petitioner's arraignment when petitioner and his counsel first consulted together about petitioner's case; that petitioner attacks the Arkansas judgment and sentence on the ground that he was inadequately represented by counsel and that he did not understand the significance of his plea of guilty, was coerced into entering such plea, and was compelled to testify against himself at the time of his arraignment and plea;

#### V.

That the record of trial before the Missouri Court, which has been made an exhibit in these habeas corpus proceedings, will show that, even though the petitioner was compelled to proceed to trial on the afternoon of the same day on which he was arraigned and after only a brief consultation with his counsel and after the Court had refused petitioner a continuance to further prepare his defense, none the less the said attorney



showed a remarkable grasp of the issues of this case and was able to, and did, give the petitioner effective assistance of counsel, and thus his appointment, to use the language of the Supreme Court in *Avery v. Alabama*, 308 U.S. 444, at page 446, was not a 'mere formal appointment,' but on the other hand, constituted a representation of the highest caliber.

## VI.

That heretofore petitioner filed a motion to vacate the judgment and sentence imposed upon him by the Arkansas Court, alleging in substance, as he does in the habeas corpus proceedings herein, that he was inadequately represented by counsel and that he did not understand the significance of his plea of guilty and was coerced into entering such plea; that this motion was denied; that thereupon petitioner filed an appeal from this denial of his motion to vacate, and on appeal the United States Court of Appeals for the Eighth Circuit affirmed the order of the Arkansas Court denying the motion to vacate and in its opinion concluded as follows:

'\* \* \* Apparently what the defendant would have us believe is that he did not know the significance of his pleas of guilty; that his counsel did not adequately represent him at the time of arraignment; and that in some way the court coerced him into entering pleas of guilty. These contentions are all in the teeth of the record, which clearly indicates that the defendant knew exactly what he was doing, and that he was shown every consideration by the trial judge, who was meticulously careful to see that the

defendant's rights were fully protected and that he was advised with respect to each count of the indictment. There is nothing in the record to justify the assertion that counsel appointed by the District Court did not competently represent the defendant. There is no basis for invalidating the sentence imposed under any count of the indictment.'

*Williams v. United States* (C.C.A. 8), 177 F. 2d 97, 98;

that this Court adopts the language of the United States Court of Appeals for the Eighth Circuit as its findings herein with relation to the attack made by petitioner against the judgment and sentence of the Arkansas Court; that petitioner was not compelled to testify against himself at any stage of the proceedings before the Arkansas Court;

## VII.

That petitioner is a confirmed criminal and has a record of felony convictions prior to his convictions before the said Missouri and Arkansas Courts;

## VIII.

That the petitioner at all times throughout his appearances before the Missouri Court and the Arkansas Court was of sane and sound mind and fully understood the nature of the charges pending against him;

## IX.

That none of the constitutional rights of petitioner was denied him by either the Missouri Court or the Arkansas Court;

## X.

That the Missouri Court and the Arkansas Court at all times had jurisdiction over the person of petitioner and the offenses charged in the indictments returned against him.

## CONCLUSIONS OF LAW

## I.

That the petitioner has failed to prove any grounds warranting his release on a writ of habeas corpus;

## II.

That the petitioner was not denied any of his constitutional rights before the trial court;

## III.

That there is no merit to the petition for writ of habeas corpus on file herein;

## IV.

That petitioner has failed to sustain the burden of proving that he was denied effective assistance of counsel before the Missouri Court;

## V.

That petitioner was not denied the effective assistance of counsel before the Missouri Court.

## VI.

That the petitioner has failed to sustain the burden of proving that he did not competently, intentionally, and intelligently plead guilty to the charges contained in the indictment returned

against him before the Arkansas Court and that he was compelled to testify against himself before the said Court;

## VII.

That the petitioner competently, intentionally and intelligently plead guilty to the charges contained in the indictment returned against him before the Arkansas Court and was not compelled to testify against himself before the said Court; that the petitioner was afforded the effective assistance of counsel before the said Arkansas Court;

## VIII.

That the petitioner is now in the legal and lawful custody and control of the respondent.

It Is, Therefore, Now Ordered, Adjudged and Decreed that the writ of habeas corpus issued herein be, and the same is hereby discharged, and that the petition for writ of habeas corpus herein be, and the same is hereby, dismissed.

Dated: March 21, 1951.

/s/ Michael J. Roche,  
Chief United States District Judge.”  
(Tr. 20-26.)

At the time the findings were entered the Court below likewise entered a “Final Order”, reading as follows:

“For the reasons set forth in the Findings of Fact and Conclusions of Law filed herein,

It Is, Therefore, Now Ordered, Adjudged and Decreed that the writ of habeas corpus issued herein be, and the same is hereby discharged, and

that the petition for writ of habeas corpus herein be and the same is hereby, dismissed, and the petitioner is hereby ordered remanded to the custody and control of the respondent.

Dated March 21, 1951.

/s/ Michael J. Roche,  
Chief United States District Judge."

(Tr. 27.)

From this latter order appellant now appeals to this Honorable Court. (Tr. 28.)

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### QUESTIONS.

The questions involved herein, as raised by appellant and which have been set forth in the foregoing findings, may be, in substance, stated as follows:

I. Was the appellant denied the effective assistance of counsel before the District Court for the Western District of Missouri?

II. Was the appellant coerced into pleading guilty and compelled to testify against himself in the proceedings before the District Court for the Western District of Arkansas?

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### CONTENTIONS OF APPELLEE.

The answer to the above stated questions is: No.

**ARGUMENT.**

Inasmuch as, in its findings of fact and conclusions of law, the Court below adequately answered the contentions of the appellant, adversely to him, and cited authorities in support of such findings, appellee will rely solely upon these findings, supported as they, of course, are by substantial evidence, and these authorities, as his sole argument in this appeal.

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**CONCLUSION.**

In view of the foregoing, it is respectfully urged that the order of the Court below is correct and should be affirmed.

Dated, San Francisco, California,  
September 4, 1951.

**CHAUNCEY TRAMUTOLO,**

United States Attorney,

**JOSEPH KARESH,**

Assistant United States Attorney,

*Attorneys for Appellee.*